

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 63 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HIMATLAL VITHALDAS KAKU

Versus

GUJARAT ELECTRICITY BOARD

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Appearance:

MR UA TRIVEDI for Petitioner

MR MD PANDYA for Respondent No. 1

SERVED for Respondent No. 2, 3

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 03/12/97

ORAL JUDGEMENT

Heard learned counsel for the petitioner. None appears for respondents inspite of service and inspite of waiting for the learned advocates for more than two days.

One grievance of the petitioner in this petition is about non-payment of subsistence allowance during the period he remained under suspension under Order dated 2nd August, 1979 at the rate of 75%, as he has been paid subsistence allowance only @ 50% of his pay. According to the petitioner, he was working in Gujarat Electricity Board as Peon. On 2nd August, 1979 he was suspended from service as a criminal complaint was lodged against him under Section 326 of the Indian Penal Code, which proceeding ultimately terminated in conviction of the petitioner for which he was sentenced to two years rigorous imprisonment and a fine of Rs. 3000/=. As the petitioner who was in jail apprehended to undergo extended period of rigorous imprisonment. unless he was able to pay fine, he approached this Court for release of subsistence allowance during the period of his suspension @ 75% and permitting him to withdraw amount from his Provident Fund Account. Special Civil Application No. 4269 of 1989 filed by the petitioner came to be decided by this Court on 11th August, 1989. As per the statement of learned counsel for petitioner, respondents have passed an order granting subsistence allowance @ 75%, therefore, the Court observed that grievance of petitioner does not survive in that regard. Regarding second grievance about sanctioning withdrawal from Provident Fund Account, keeping in view the petitioner's predicament, the Court directed the respondents to decide the representation of the petitioner within a period of 15 days from the date of receipt of Writ. On these observations, that petition came to be dismissed as withdrawn.

On 17-2-1990, petitioner made a representation to release difference of subsistence allowance claimed by him, as calculated by the respondents in pursuance of the Order referred to in the judgement of the High Court, stated above. In reply thereto, petitioner received Annexure-A in which he was informed that after withdrawal of the appeal on the basis of order made by respondent on 13-7-1989, the respondents have withdrawn that order of 21st August, 1989 and refused his prayer for making payment of subsistence allowance @ 75% instead of 50%, which was already paid.

This letter clearly discloses that having induced the petitioner to make statement on the basis of its order granting him relief claimed in the petition, to withdraw his prayer for the relief in that regard, the Board has decided to withdraw that order and to put the petitioner in the same predicament that neither he got determination of the issue on merits from the Court

inspite of he having approached this Court in that regard own their voluntary act inducing him to make a statement for withdrawing the petition, and thereafter, cancelling the order itself. This conduct does not behove respondent-Board which is a State within the meaning of Article 12 and is under obligation to act fairly and justly in all its sphere of activities; including employee-employer relation. To this extent, this petition must succeed, and accordingly, respondents are directed to make the payment of difference of subsistence allowance as per its earlier order dated 13th July, 1989 to the petitioner within a fortnight of the receipt of writ of this Court or production of certified copy of the order by the petitioner.

So far as petitioner's claim for Gratuity is concerned, it does not appear to be justified inasmuch as petitioner has been dismissed from service for having been convicted on a criminal charge and having undergone rigorous imprisonment for a period of two years. It is not the case of the petitioner that it was a case of Contributory Gratuity Fund to which petitioner has contributed anything and he is entitled to refund of his contribution atleast. The gratuity becomes right of an employee on satisfactory conclusion of service. Gratuity amount is not ordinarily payable to any employee who has been dismissed for misconduct or who has been dismissed on account of he having been convicted on a criminal charge. That relief is, therefore, refused.

Accordingly, this petition partly succeeds, as stated above. Rule made absolute in that terms. There shall be no order as to costs.

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Prakash\*